IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA

AND

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

WRIT APPEAL NO.2384/2002

The Management of Micro Lab
Private Limited,
92, SIPCOT, Hosur 635 125.
Dharmapuri District. .. Appellant/Petitioner in WP.28975/94.

Vs

1.The Presiding Officer,
Labour Court, Vellore-4.

2.P.N.Suseela ..Respondents/Respondents in WP.28975/94.

Appeal filed under section 15 of Letters Patent against the order passed by the learned Single Judge dated 20.06.2002 in W.P.No.20975 of 1994 - Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records from the file of the Labour Court, Vellore 4, the first respondent herein in I.D.No.206 of 1992 and quash the award passed therein dated 7.1.1994.

For Appellant : Mr.V.Karthick for M/s.T.S.Gopalan
For Respondents: M/s.S.Girija for R2
R1 : Labour Court

JUDGMENT

M.VENUGOPAL, J.

The appellant in the writ appeal is the petitioner in W.P.No.20975 of 1994 and respondent in I.D.No.212 of 1989 before the Labour Court, Coimbatore, and the same was transferred to Labour Court, Vellore, the first respondent herein. The second respondent herein is the petitioner before the Labour Court, filing a claim petition praying to pass an award treating the action of the Management for terminating her from service as illegal, void and in-

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operative and resultantly ordering for her reinstatement with continuity of service and full backwages with all other benefits. The second respondent/petitioner before the Labour Court took a stand in I.D.No.212 of 1989 that she was working only as a regular worker and not as a contractor as claimed before the Conciliation Officer by the appellant/Management and that she was working along with all other workmen and it was purely with employer-employee relationship.

2.It is the further stand of the second respondent/employee that even if the employer called her as a contractor and other workers engaged by her as contract workers, to avoid liability under various statutory provisions of law, she was termed as contractor and that too, only after raising the dispute and that there was no license for engaging contract labour or firm was not registered under section VII of Contract Labout [Regulation and Abolition] Act.

3.The appellant/respondent filed a counter stating that it was an utter falsehood that the second respondent/employee was working as only a regular worker and not as contractor as mentioned before Conciliation Officer by the respondent and further it was also false to state that the second respondent/petitioner/employee was also working along with all other workmen and it was purely with the employer and employee relationship. In the counter to the claim petition before the Labour Court, Coimbatore, the appellant/Management, inter-alia, averred that the second respondent/employee was engaged as a contractor to supply labour to the appellant/Management and that she made an application for licence through her letter dated 24.12.1987 to the Inspector of Factories, Dharmapuri [competent authority] under the Contract Labour [Regulation and Abolition] Act and that there was a contract between second respondent/employee and the appellant/Management for supplying labour to the Management and she was engaged as a contractor with effect from 01.01.1988 and that the second respondent/employee started exploiting the labourers working under her and she failed to follow the procedure on the maintenance of records and also violated the provisions of the Contract Labour Act and therefore, the appellant/Management terminated the contract with effect from 30.06.1988.

4.Learned counsel for the appellant contends that the first respondent/Labour Court had erred in coming to the conclusion that merely because the second respondent/employee was covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and time card was issued under Factories Act, she would be a worker in the service of the appellant and that the first respondents/Labour Court failed to appreciate that under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, Employees' State Insurance Act and the Factories Act, both the contractor and his workmen working in the premises of the Principal employer have to be covered. But by mere reference to the coverage,

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one cannot come to the conclusion that they were employed in the service of Principal employer and therefore, prayed for allowing the writ appeal and to set aside the orders passed by the learned Single Judge in W.P.No.20975 of 1994 dated 20.06.2002.

5.According to learned counsel for the appellant/Management, Ex.W-5-1988 Agreement and Ex.W-6-Cancellation of the Agreement dated 26.08.1988, would go to show that the second respondent/employee was only a contractor and not a worker under the service of the appellant. The first respondent/Presiding Officer, after analyzing the evidence of WW.1-Suseela and on examination of exhibits W.1 to W.7 and M.1 to M.5 and on considering the available materials record, came to the definite conclusion that that the second respondent/employee was working in the Packing Division of the Management and not as a contract labour and even if she had worked as a contract labour, did the work and could have also done it through contract workmen and even then, she would be a workman of the establishment and passed an award holding that her termination was unjustified and ordered for reinstatement with backwages and continuity in service. The time card, Ex.W.4 was issued in favour of the second respondent/employee. Exs.W.1 and W.2 relate to the period 1985-86 and 1986-87 pertaining to the Provident Fund slips. Only because of the fact that the second respondent/employee was an employee of the appellant/Management, the appellant/Management has contributed their part towards provident fund on her behalf. If the second respondent/employee was only a contract labour, then there was no occasion for the second respondent/employee to have contribute her contribution. In general practice, the regular workers are issued the time card. The second respondent/employee supplied labour to the appellant/Management as per the contract.

6.There is no fetter for an individual to be a workman and to apply for a license under the Contract Labour [Regulation and Abolition] Act, 1970, in our considered opinion. It is not in dispute that no license was issued to the second respondent/employee with regard to her application-Ex.M.1 dated 24.12.1987 by the Chief Inspector of Factories.

7.It is pertinent to point out that a contractor can extract the work through the labour and she could serve the Management/employer in her capacity as worker. Learned counsel for the appellant/Management referred to the relevant portion of Section 2[9] of the Employees State Insurance Act, 1948 which defines 'employee' as:

> "[9]"employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and-
>
> [i]who is directly employed by the principal employer on any work of, or

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incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

[ii]who is employed by or through an immediate employer on the premises of the factor or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factor or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

[iii]whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment."

and also to section 39[1] of the said Act which refers to the contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer [hereinafter referred to as the employer's contribution] and contribution payable by the employee [hereinafter referred to as the employee's contribution] and shall be paid to the Corporation…"

8.Learned counsel for the appellant/Management also placed reliance on the definition 'employee' under section 2[f] of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, wherein it is defined as follows:

"[f]'employee' means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of [an establishment] and who gets his wages directly or indirectly from the employer, [and includes any person,-

[i]employed by or through a contractor in or in connection with the work of the establishment;

[ii]engaged as an apprentice, not being an apprentice engaged under the Apprentices Act,

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1961 [52 of 1961] or under the standing orders of the establishment].”

9.He also cited section 30 of the Employees Provident Fund Scheme, 1952, wherein it is observed as follows:-

“30.PAYMENT OF CONTRIBUTION:-

[1]The employer shall, in the first instance, pay both the contribution payable by himself [in this section referred to as the employer’s contribution] and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member [in the Scheme referred to as the member’s contribution].

[2]In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee [in the scheme referred to as the member’s contribution] and shall pay to the principal employer the amount of member’s contribution so deducted together with an equal amount of contribution [in this scheme referred to as the employer’s contribution] and also administrative charges.

[3]It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.

Explanation:For the purposes of this paragraph the expression “administrative charges” means such percentage of the pay [basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon] for the time being payable to the employees other than an excluded employee, and in respect of which provident fund contributions are payable as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses, fix.]”

10.Learned counsel for the appellant/Management referred to section 2[l] of the Factories Act, 1948 which defines 'worker' as follows:-

"2[l]'Worker' means a person [employed directly or by or through any agency [including a contractor] with or without the knowledge of the principal employer,

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whether for remuneration or not] in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process, [but does not include any member of the armed forces of the Union]."

11.As a matter of fact, the second respondent/employee before her termination, was in service for a period from 1985-1987. As far as the present case is concerned, the ESI card, the time card and the Provident Fund slips in favour of the second respondent/employee would go to prove that the second respondent/employee was working as a regular worker and therefore, she comes clearly within the ambit and definition of 'workman' as per section 2[s] of the Industrial Disputes Act, 1947, in our considered opinion. Though the second respondent/employee claims that she entered into the service of the appellant/Management from 21.06.1983 in the Packing Department, the Provident Slips filed on her behalf as Exs.W-1 and W-2 refer to 1985-86 and 1986-87 and certainly these documents are in her favour and strongly support her case, in our opinion.

12.The finding given by the Labour Court in its award dated 07.01.1994 in labour dispute case in ID No.206 of 1992 and the finding given by the learned Single Judge in W.P.No.20975 of 1994 order dated 20.06.2002 that the second respondent/employee was a workman, is a concurrent finding, the factual aspect of which cannot be interfered with by us.

13.The definition of 'employee' as found in section 2[f] of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the definition 'employee' as per section 2[9] of the ESI Act are different from that of the definition 'workman' as seen from section 2[s] of the Industrial Disputes Act, 1947. In fact, the definition of Workman as per section 2[s] of the Industrial Disputes Act operate on a different field and that the definition is very vide.

14.In this case, learned counsel for the appellant/ Management contends that an interim application in IA.No.612 of 1993 in ID.No.206 of 1992 was filed before the first respondent/Labour Court by the appellant/Management to reopen the case and to send for the documents from the Office of the Inspector of Factories, Dharmapuri pertaining to the file of second respondent/employee/contractor of the appellant-Company for the period from 01.01.1988 to 31.12.1988 and the application dated 24.12.1987 was filed for issue of license in file No.13.3790/88 dated 25.05.1988 and that the said application was dismissed by the Labour Court, Vellore as highly belated and this was taken as one of the grounds in the appeal. At this juncture, it is quite pertinent to point out that in the present case on hand, in our view, there was employer-employee or Master and Servant

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relationship between the appellant/Management and the second respondent/employee, more so, when the second respondent/petitioner worked in the Packing division as an employee. Even though the appellant/Management takes a stand that earlier they filed an application to send for the documents from the office of the Inspector of Factories, Dharmapuri and the said application was not ordered, as averred in IA.No.89/1993 before the first respondent/Labour Court, we are of the opinion that this will not in anyway help the case of the appellant/Management any further. Further more, the dismissal of the IA.No.89/1993 on 02.12.1993 will not also enure to the benefits of the appellant/Management.

15.In the present case, it also transpires that I.A.No.612 of 1994 was filed before the first respondent/Labour Court to review the award passed by it on 07.01.1994 by reopening the case and for sending of documents from the Inspector of Factories, Dharmapuri and to permit the appellant/Management to let in evidence on their behalf and an order was passed on 08.09.1994 by the Labour that the award was passed already and the Court cannot sit in Judgment over the propriety of the order passed by the earlier Presiding Officer and revoke his award and that review was only to correct any opportunity or mistake on the face of the Judgment or award passed and there was no question of reopening their case and permitting the party to adduce further evidence and if possible, to reverse the Judgment under the question of review. The first respondent/Labour Court, Vellore passed an award on 07.01.1994 in ID.No.206/1992.

16.We are of the view that under section 2[A] of the Industrial Act, remedy is available only when a workman is dismissed, discharged or terminated. We also opine that the object of the Industrial Disputes Act is to protect workman whose services have been continuously engaged for a considerable period of time.

17.Looking at the matter from any angle and in the light of our discussions mentioned supra, we are of the considered view that the second respondent/employee was a workman coming within the purview of the definition of 'workman' under section 2[s] of the Industrial Disputes Act, 1947 and in the instant case, the relationship of the employer-employee or Master and Servant relationship was established clearly and therefore, the concurrent finding of fact by the first respondent/Labour Court, Vellore in its award dated 07.01.1994 and that of the learned Single Judge in W.P.No.20975/1994 dated 20.06.2002 are affirmed and cannot be interfered with and consequently, the writ appeal fails and the same is dismissed in

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furtherance of substantial cause of justice. However, there shall be no order as to costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

Ap

To
The Presiding Officer, Labour Court,
Vellore.

+ 1 CC To Mr. T.S.Gopalan & Co. Advocate SR NO.70841

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